IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5009 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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RANCHHODBHAI BHURABHAI VASANI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5009 of 2002

MR SUNIL C PATEL for Petitioner No. 1

MR HH PATEL, AGP for Respondent No. 1-3

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 01/08/2002

ORAL JUDGEMENT

1. Heard ld. counsel Mr. Prajapati for Mr. Sunil C. Patel, ld. counsel for the petitioner, ld. AGP Mr. HH

Patel for the State and ld. Standing Counsel Ms. Davawala for Union of India.

2. By this petition under Article 226 of the Constitution of India, the petitioner- detenu has challenged the legality and validity of the order of detention dated 13.3.2002 passed against him by the Ld. District Magistrate, Bhavnagar in exercise of the powers conferred on him by Section 3(2) of The Prevention of Black-Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as the "PBM Act".)

3. Bunch of papers supplied with grounds of detention to the petitioner reveals that the sponsoring authority found that the petitioner was involved in indulging the activities of black-marketing of the stock drawn by him for distribution to the card-holders such as blue kerosene, wheat, rice, sugar etc. The petitioner has been issued licence to run government approved Fair Price Shop in the year 1991 and under the contract, the petitioner is running said Fair Price Shop. Fair Price Shop of the petitioner was inspected by the responsible officers of Civil Supplies Department, State of Gujarat, Gandhinagar in presence of panchas on 29.1.2002 to 1.2.2002 and the Inspecting Team found gross irregularities. On the papers submitted by the sponsoring authority, recording subjective satisfaction, the detaining authority passed the impugned order of detention. Order of detention was executed on the same day.

4. The petitioner has challenged the legality and validity of the order of detention and especially continued detention on various grounds. Ld. counsel Mr. Prajapati has taken this Court through the entire memo of the petition and has submitted that the order of detention is illegal and bad-in-law and, therefore, the same should be quashed and set aside. In the alternative, he has submitted that the continued detention of the detenu should be turned down.

5. This petition has been resisted by the State as well as by the Union of India. Affidavit filed by Under Secretary, Department of Consumer Affairs, Food & Public Distribution, New Delhi is tendered today by ld. Standing Counsel Ms. Davawala which is taken on record. Ld. AGP Mr. H.H. Patel has tendered two affidavits; one filed by the detaining authority and the second one by the State Government and both these affidavits are also taken on record.

6. Considering the nature of submissions advanced by the ld. counsel Mr. Prajapati for the petitioner, it is not required to consider the affidavit-in-reply filed on behalf of Union of India as the ld. counsel for the petitioner has not pressed the grounds concerning the role of the Union of India in the matter of the present petitioner.

7. Ld. counsel Mr. Prajapati has concentrated his arguments mainly on two points. The first point argued by ld. counsel Mr. Prajapati is that though the shop of the petitioner was raided or say inspected in the month of January and inspection was over totally on 1.2.2002, detaining authority has passed order of detention on 13.3.2002. Pointing out from the grounds of detention served to the petitioner, it is submitted that these grounds of detention clearly indicates that they were ready in the month of February, 2002. However, by correcting the month, the same are served along with the order of detention on 13.3.2002. This part of delay in passing the order of detention goes to the validity of the order and hence looses the proximity with the real intention to prevent the alleged activities of the petitioner. According to ld. counsel Mr. Prajapati, as per the information available to him, even the State Government or the District Magistrate have not suspended the licence of Fair Price Shop issued to the petitioner. So, the cause for detention does not remain sustainable.

8. The second point argued by ld. counsel Mr. Prajapati is that the petitioner has not been served with the legible copies of all relevant and vital documents referred to and relied upon by the detaining authority for recording subjective satisfaction. He has taken this Court through number of such documents and on bare perusal thereof, this Court is satisfied that the documents which are at Page Nos.169 to 172, 217, 219, 248, 249, 302, 303 and 304 are not very clear or legible. Most of these documents are the bills issued to the card-holders. In some of the bills, name of the card-holder is not legible; in some of the bills number of bill is not legible and in some of the bills date of issuance of bill is not legible. In most of the bills, either all the three infirmities as aforesaid or at least two of them are found. There was enough time in preparing legible copies as even as per the reply affidavit, papers were with the detaining authority on 20.2.2002. So, it is rightly argued that this has resulted into serious prejudice and the petitioner has been prevented from making an effective representation

against the order of detention. It is submitted that on both these counts, the order of detention as well as continued detention shall be turned down without going into the merits of the other grounds raised in the petition. From the aforesaid facts situation, it clearly transpires that the subjective satisfaction recorded by the detaining authority is not genuine nor does it transpire from the affidavits filed by the other side. I agree that there is one serious allegation in the grounds of detention served to the petitioner that he has failed to explain disposal of the stock of 3400 liters of blue kerosene. Obviously, he has not issued the bills to any card-holders nor had ever distributed the stock legitimately and so it was not possible for the State Machinery to collect the documentary evidence in this regard. However, it is on record that this stock was drawn by the petitioner on the alleged facts. It is also on record that this apparent wrong was admitted by the petitioner before the Inspecting Team.

9. In response to the query raised by this Court, ld. counsel Mr. Prajapati has pointed out that even if the Court is satisfied that aforesaid fact of non-explanation of this stock and admission on the part of the petitioner, can alone be the ground for detention, the order of detention shall have to be turned down because the subjective satisfaction has not been recorded on the aforesaid sole ground, but the same has been recorded considering various aspects and grounds mentioned for the order of detention as well as grounds of detention. In support of his submission, ld. counsel Mr. Prajapati has placed reliance on the decision of the Division Bench of this Court in the case of Kishor Amratlal Patel, s/o Detnu Amratlal Mohanlal Patel v/s Rajiv Takaru & Ors., reported in 1987(2) GLR 1031. It would be beneficial to refer to relevant para-4 of the said decision, which says:-

" The detaining authority has relied upon various grounds in support of the detention orders and they are listed at items No.1 to 13 in the grounds of detention. At item No.12 is found the ground to the effect that on 16.2.1986 when two samples were taken by the Food Inspector, Rajkot from the stock of Kitchen Queen brand groundnut oil manufactured in the detenu's mill it was found that the groundnut oil manufactured by the detenu wasnot upto the standard required by the Prevention of Food Adulterataion Rules and that showed that the detenu was indulging in manufacturing adulterated groundnut oil in his

mill. It is vehemently contended by the learned Advocate for the petitioner that the aforesaid ground is totally extraneous to the scope and ambit of sec.3 of the Act under which the detention order can be passed against the concerned detenu and as such extraneous ground has entered the subjective satisfaction of the detaining authority. "

10. In the above-cited case, the order of detention was passed based on 13 different grounds and subjective satisfaction of the authority was recorded on account of all the 13 different grounds and ultimately the Court found that one of the ground i.e. ground no.12 was beyond the purview of the Act and hence the Court held that the subjective satisfaction recorded by the authority is vitiated solely on that ground and consequently, order of detention was quashed and set aside. Same analogy shall have to be applied to the present case. Even on merits, the order of detention is not found genuine and satisfactory.

11. For the reasons aforesaid, this petition is allowed. Impugned order of detention dated 13.3.2002 passed by the Ld. District Magistrate, Bhavnagar, is hereby quashed and set aside and detenu is hereby ordered to be set at liberty forthwith if he is not required to be detained in any other case. Rule is made absolute. Direct Service is permitted.

01-08-2002 [C. K.BUCH, J]
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